

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

**SEAPORT PRINTING & AD SPECIALTIES, INC.,
d/b/a PORT PRINTING AD AND SPECIALTIES**

and

Case 15-CA-17976

**LAKE CHARLES PRINTING AND GRAPHICS UNION,
LOCAL 260 affiliated with GRAPHIC COMMUNICATIONS
INTERNATIONAL UNION, AFL-CIO**

ORDER

Employee Vince Mott's Request for Review of the Acting General Counsel's decision sustaining the Regional Director's compliance determination is granted and the case is remanded to the Regional Director for appropriate action, as described below.

On December 28, 2007, the Board issued a decision in this case finding that the Respondent violated Section 8(a)(5) and (1) by refusing to engage in effects bargaining with the Union over the decision to lay off employees and by using nonunit employees and supervisors to perform bargaining unit work without affording the Union an opportunity to bargain with respect to this conduct and its effects. *Port Printing Ad & Specialties*, 351 NLRB 1269, 1270. The Board ordered the Respondent, among other things, to make unit employees whole for the loss of earnings and other benefits attributable to its failure to bargain. *Id.* at 1271, 1272. The Fifth Circuit enforced the Board's Order on December 8, 2009.¹

On June 30, 2011, the Regional Director issued a compliance determination letter to employee Vince Mott, setting forth the basis of her findings regarding the appropriate reimbursement Mott is owed for backpay. The Regional Director found,

¹ 589 F.3d 812.

among other things, that the appropriate backpay period is from October 16, 2005, the date the Respondent resumed printing work, through February 1, 2008, the date the Respondent offered Mott full reinstatement to his job performing printing work; that the appropriate measure of gross backpay was days worked by Lannis Soileau, the only full-time employee performing printing work during the entire backpay period; and that the collective-bargaining agreement requires the Respondent to pay a day's pay for any employee ordered to report to work. The Region concluded that for each day Soileau worked, eight hours of regular pay at \$12.85 per hour should be included in the calculation as well as all overtime worked by Soileau and holiday and sick leave pay. In this regard, the Region found that the Respondent paid Mott outstanding sick leave and vacation pay at the time of his layoff and that additional accrual of vacation and sick leave for purposes of back pay commenced on Mott's anniversary date of May 26, 2007, through the end of the backpay period. Taking into account Mott's interim earnings, the Region determined that the total backpay owed Mott was \$13,814.73, plus interest.

By letter dated July 4, 2011, Mott appealed the Regional Director's findings to the Office of Appeals. Mott's appeal letter states, in relevant part, that the Region's calculations contain mathematical errors; the Region used incorrect hourly pay and overtime rates; vacation and sick leave were not calculated for the correct time period; overtime was calculated on a weekly basis rather than a daily basis as required by the contract; and interim expenses should not be disallowed when backpay is less than interim earnings and expenses combined. Mott contends that the correct amount of backpay owed him is \$19,977.73.

In support of his appeal, Mott submitted 16 exhibits, including corrected copies of the compliance determination with mathematical errors highlighted; documentation purporting to show that he was paid for accrued vacation and sick leave time through October 15, 2005, rather than May 20, 2006, as determined by the Region; a copy of comparable employee Lannis Soileau 's timecards, showing overtime hours worked that the Region did not credit to Mott; and a copy of Memorandum GC 11-08 giving guidance on the reimbursement of interim work related expenses.

By letter dated August 25, 2011, the Office of Appeals denied Mott's appeal "substantially for the reasons in the Regional Director's June 30, 2011, letter." The Office of Appeals stated, however, that with respect to Mott's contentions challenging the hourly pay rate used to project gross backpay, the Region conducted a subsequent investigation and verified that Mott's claim that backpay should be calculated based on \$12.95 an hour, rather than \$12.85 an hour, was correct. The denial letter indicated that the Region then revised the figures accordingly and applied the rates to all calculations. The letter also stated that gross back pay was calculated in accordance with the contract at 8 hours a day for any day in which a comparable employee reported to work and that overtime was also calculated for any day in which a comparable employee worked over 8 hours. With respect to Mott's contentions about calculations of vacation and sick leave, the denial letter stated that the calculations were based on additional accrual of vacation and sick leave commencing on Mott's anniversary date of May 26, claiming that "this information was communicated to you via email in April 2011 and you did not raise any challenges." Finally, the denial letter stated that the Region also reviewed the previously performed calculations and found an error in the fourth

quarter 2005 gross wages where the holiday pay was not added to the total figure. The Region subsequently corrected this error. The denial letter indicated that the Region's revised backpay calculation was \$14,524.04.

The Office of Appeals' denial letter did not explain or even mention the discrepancies in the timecards Mott submitted regarding the Region's calculation of his overtime hours. Nor did it address his contentions that interim expenses should not be disallowed when backpay is less than interim earnings and expenses combined.

On September 5, 2011, Mott, acting pro se, filed the instant request for review. Mott maintains that the Regional Director's revised calculation was incorrect for the following reasons:

- (1) the statement in the Appeals denial letter that he did not challenge the April 2011 email concerning the dates used for calculating his vacation and sick leave is incorrect. In support of his appeal, Mott provides emails he sent to the compliance officer which he contends show that he did in fact challenge the dates the Region used to calculate his accrual of vacation and sick leave on several occasions in 2010 and on May 4, 2011. Mott argues the emails show that he offered to provide the Region with documentation of the dates he contends are correct for calculating the vacation and sick leave pay owed him. He also provides an email response from the Region stating that Mott could provide the documentation after he received the compliance determination letter.

(2) the Region's overtime calculation is incorrect because the Region's calculations reflect overtime paid on hours worked in excess of 40 hours a week rather than in excess of 8 hours a day as required by the contract.

(3) other computation errors exist in the Region's calculations, but the Region only corrected the item regarding the fourth quarter 2005 holiday pay.

(4) the Region erroneously limited his interim expenses.

Having duly considered the matter, we grant Mott's Request for Review. On the issue of vacation and sick leave, Mott's appeal provides documentation showing that, contrary to the determination of the Office of Appeals, he did in fact contest the date the Region used for calculating when his vacation and sick leave pay accrual commenced. An email dated January 10, 2011, from the Region's compliance officer to Mott states, in relevant part: "Respondent (Seaport Printing) further advised that your anniversary date was in May thus vacation accrual would have commenced in May 2006 as you were paid all vacation pay through May 2006 owed to you at the time of your layoff. Please provide position on this issue as well." Mott's reply, also dated January 10, 2011, states: "As far as the vacation they contend was paid to me through May 2006, is false. The only vacation and sick leave time paid was the amount accrued up until my layoff, none after." (Mott's unlawful layoff occurred in October 2005).

In a second email sent to the Region's compliance officer, dated May 4, 2011, Mott states: "on one of the last emails you said something about gloria payed me vacation and sick time thru may 2006. I have proof including a check stub that I was

only paid for vac & sick time accrued thru october 2005. If you want that documentation please let me know.” The Regional Attorney’s reply email, dated May 5, 2011, states, “Mr. Mott, once you get the Compliance Determination letter that deals with the backpay area in your email, if you deem it necessary, you can include the referenced document and explain its relevance.”

The Office of Appeals denied Mott’s appeal on this issue stating: “With respect to your contentions about calculations of vacation and sick leave, the investigation disclosed that the calculations were based on accrual commencing on your anniversary date of May 26. The investigation disclosed that this information was communicated to you via email in April 2011 and you did not raise any challenges.” However, the emails discussed above show that Mott did raise challenges on several occasions, before the compliance determination letter was sent and after (as the email from the Regional Attorney advised him). Yet the denial letter states simply that Mott “did not raise any challenges” to the dates used for the calculation and denies his appeal on that ground alone. Under these circumstances we cannot determine whether the Regional Director used the correct date for calculating the accrual of Mott’s vacation and sick leave pay, and we therefore remand this issue to the Regional Director for further explanation and appropriate calculations, if needed.

With respect to overtime pay, the Regional Director and the Office of Appeals stated that overtime was calculated for any day in which comparable employee Lannis Soileau worked over 8 hours. Mott contends, however, that the Region’s overtime calculations reflect overtime paid on hours worked in excess of 40 hours a week rather than in excess of 8 hours a day as stated in the contract. In support of his appeal Mott

attached copies of Lannis Soileau's timecards from October 17, 2005 to June 15, 2006. A review of a random sample of these cards appears to support Mott's analysis. For example, for the pay period ending November 30, 2005, the timecard shows that Soileau worked nine and a quarter hours on one day and eight and three quarters of an hour on another day, for an apparent total of 2 overtime hours for the pay period. Yet the Region gives no credit for overtime for that period. We acknowledge that the timecard does not designate that extra time as overtime, and therefore there may be some reason that Mott's contentions are incorrect.

However, in denying Mott's appeal regarding overtime pay, the Appeals denial letter stated simply that "overtime was also calculated for any day in which a comparable employee worked over 8 hours." Although Mott supplied the copies of the timecards with his appeal, the denial letter does not mention the timecards and does not explain the discrepancies. Because the denial letter failed to address Mott's submissions or provide any explanation of the apparent difference in calculations, we are unable to determine from the record before us whether there is merit to Mott's contention, and we therefore remand this issue to the Regional Director for further explanation and appropriate calculations, if needed.

Mott's request for review also contends that the Regional Director's revised computations contain mathematical errors, and requests that the Board review the documents he submitted on appeal and make the necessary corrections. The denial letter stated: "the Region also reviewed the previously performed calculations and found an error in the fourth quarter 2005 gross wages where the holiday pay was not added to the total figure. The Region subsequently corrected this error." Mott contends that

additional errors were not corrected. However, it appears that the Region did make numerous corrections when it recalculated the backpay. Nevertheless, we remand this issue also for additional review by the Region.

Finally, Mott states that “I would like to address the issue of limits [the Region] has placed on my interim expenses.” Mott references Memorandum GC 11-08 giving guidance on the reimbursement of interim work related expenses. The memorandum, dated March 11, 2011, states that “effective with the issuance of this memorandum, search-for-work and work-related expenses will be calculated separately from backpay and will be charged to Respondent regardless of whether the discriminatee received interim earnings during the period.” The Region, however, did not calculate Mott’s interim expenses separately from his backpay and in five quarters gave him no credit for interim expenses. Moreover, the Office of Appeals failed to address this issue in its denial letter. We therefore remand this issue to the Regional Director for further explanation and appropriate calculations, if needed.

Accordingly, for the reasons discussed above, we remand this proceeding to the Regional Director for Region 15 for further action consistent with this decision. On remand the Regional Director shall issue an amended compliance determination addressing (1) the appropriate date to be used for calculating Mott’s vacation and sick leave pay and (2) the basis for the Region’s overtime calculations. The Region shall also recalculate Mott’s interim expenses in accordance with Memorandum GC 11-08 and make further computation revisions consistent with this Order.

Dated, Washington, D.C., December 30, 2011.

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, Member